Employer May be Liable for Injury Caused by Employee Who Drank Too Much at Company Party, California Court Rules

By Mark S. Askanas and Mitchell F. Boomer

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An employer could be held liable for its employee's off-duty accident as long as the proximate cause of the injury (here, alcohol consumption) occurred within the scope of employment, the California Court of Appeal has held, reversing summary judgment in favor of the employer. *Purton v. Marriott Int'l, Inc.*, No. D060475 (Cal. Ct. App. Jul. 31, 2013). The Court further ruled it was irrelevant that the effect of the employee's negligence occurred after he had arrived home from the employer-sponsored party.

Background

Marriott International, Inc. employed Michael Landri as a bartender at the Marriott Del Mar Hotel (the "Hotel"). Before the Hotel's December 2009 holiday party, Landri drank a beer and a shot of whiskey at home. He then took a flask containing approximately five ounces of whiskey to the party. Although the Hotel served only beer and wine at the party and gave each employee two drink tickets, Landri drank his whiskey. Also, the bartender refilled Landri's flask from the Hotel's liquor supply.

Landri left the party with others and returned home. Later, while driving an intoxicated coworker home, Landri struck a vehicle, killing Dr. Jared Purton, its driver. Landri was convicted of vehicular manslaughter and went to prison. Dr. Purton's parents sued Marriott for wrongful death. The employer asked the trial court to dismiss the case because Landri was not acting within the scope of his employment at the time of the accident. The trial court granted the motion, and the plaintiffs appealed.

Applicable Law

An employer may be held vicariously liable for torts committed by its employee within "the scope of employment." *Mary M. v. City of Los Angeles*, 54 Cal. 3d 202, 208 (Cal. 1991). The California Supreme Court, in a workers' compensation case involving employee intoxication, has instructed, "Employee social and recreational activity on the company premises, endorsed with the express or implied permission of the employer, falls within the course of employment if the activity was conceivably of some benefit to the employer or otherwise was a customary incident of the employment relationship." *McCarty v. Workmen's Comp. Appeals Bd.*, 12 Cal.3d 677, 681-82 (Cal. 1974).

McCarty further noted that, although the "going and coming" rule would normally preclude liability for torts committed by the employee while going or coming to the workplace, the rule did not apply where the employee became intoxicated at the workplace because that intoxication was the proximate cause (in that case) of the employee's death.

Employer Could be Held Liable

The appellate court rejected the employer's argument that it should not be held liable for Dr. Purton's death because Landri was acting outside the scope of his employment when the accident occurred. Applying *McCarty*, the Court found there was sufficient evidence demonstrating Landri was acting within the scope of his employment when he became intoxicated. It found the party was a thank-you to employees and the party's purpose was "[c]elebration, employee appreciation, holiday spirit, [and] team building." Accordingly, the Court concluded a reasonable trier of fact could find that Landri was acting within the scope of his employment when he consumed alcohol at the party.

The employer then argued that, even if Landri was acting within the scope of his employment when he

Meet the Authors

Mark S. Askanas

Principal
San Francisco 415-394-9400
Email

Mitchell F. Boomer

Principal and Office Litigation Manager
San Francisco 415-394-9400
Email

became intoxicated, its liability ended when he arrived home. The Court disagreed, finding "no reasonable justification for cutting off an employer's potential liability as a matter of law simply because an employee reaches home." It explained that vicarious liability is not based on when the injury occurred, but on the act that caused the injury.

The employer also argued that it should not be held liable because it had no right to control Landri's personal conduct when he reached home. The Court rejected this as well, finding that the employer cannot ignore "the fact that it created the risk of harm at its party by allowing an employee to consume alcohol to the point of intoxication." The Court suggested the employer could have lowered this risk by prohibiting smuggled alcohol, limiting or eliminating alcohol consumption, or serving food. It emphasized, "[I]f a commercial enterprise chooses to allow its employees to consume alcoholic beverages for the benefit of the enterprise, fairness requires that the enterprise should bear the burden of injuries proximately caused by the employees' consumption."

Accordingly, the Court reversed summary judgment and remanded the case for further proceedings.

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Purton expands the meaning of "scope of employment" for employers and makes clear that, whether an employee was acting within his scope of employment is a question of fact for a jury. Employers holding employee appreciation events where alcohol is served should recognize the risks and should consider taking actions to lower the risks, such as enforcing alcohol consumption limits.

For more information on this or other workplace developments, please contact the Jackson Lewis attorney with whom you regularly work.